

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

DENIS KOCH KOCIBELLI,)
)
 Plaintiff,)
)
vs.) Case No. 3:22-CV-2905-MAB
)
SHALANDRA BARNES, MS.)
ARMSTRONG, MR. ATCHINSON,)
PRUETT, and MR. OSBORNE,)
)
 Defendants.)
)

MEMORANDUM AND ORDER

BEATTY, Magistrate Judge:

Plaintiff Denis Koch Kocibelli, who at the time he filed his Complaint was an inmate of the Illinois Department of Corrections ("IDOC"), brings this action pursuant to 42 U.S.C. § 1983 for deprivations of his constitutional rights while at Vandalia Correctional Center. On June 15, 2023, the Court dismissed Kocibelli's Complaint for failure to state a claim (Doc. 13). Kocibelli was granted leave to file an Amended Complaint and given a deadline of July 13, 2023 (*Id.* at p. 6). The Order was sent to Kocibelli at Vandalia Correctional Center. The Order was returned, noting that Kocibelli was no longer housed at Vandalia. No forwarding address was provided (Doc. 14). A review of IDOC's website indicated that Kocibelli was released from IDOC custody on March 30, 2023 (Doc. 15). He failed to update his address, despite a prior warning to do so (*Id.*).

On July 11, 2023, the Court entered a notice of impending dismissal, ordering Kocibelli to update his address with the Court or face dismissal of his claims (Doc. 15).

The deadline for Kocibelli to update his address was July 25, 2023. The Court recently received a returned envelope noting that the Order was unable to be delivered to Kocibelli due to the lack of a forwarding address after his release from custody (Doc. 16).

The Court will not allow this matter to linger. Accordingly, this action is **DISMISSED with prejudice** based on Kocibelli's failure to respond to the Court's Order and failure to prosecute his claims. Fed. R. Civ. P. 41(b); *Ladien v. Astrachan*, 128 F.3d 1051 (7th Cir. 1997); *Johnson v. Kamminga*, 34 F.3d 466 (7th Cir. 1994). The Clerk of the Court is **DIRECTED** to close this case and enter judgment accordingly.

IT IS SO ORDERED.

DATED: August 3, 2023

/s/ Mark A. Beatty
MARK A. BEATTY
United States Magistrate Judge

NOTICE

Plaintiff is advised that this is a final decision ending his case in this Court. If Plaintiff wishes to contest this decision, he has two options: he can ask the undersigned to reconsider the Order or he can appeal to the Seventh Circuit.

If Plaintiff chooses to go straight to the Seventh Circuit, he must file a notice of appeal in the district court *within 30 days* from the entry of judgment. FED. R. APP. P. 4(a)(1)(A). The deadline can be extended for a short time only if Plaintiff files a motion showing excusable neglect or good cause for missing the deadline and asking for an extension of time. FED. R. APP. P. 4(a)(5)(A), (C). *See also Sherman v. Quinn*, 668 F.3d 421, 425 (7th Cir. 2012) (explaining the good cause and excusable neglect standards);

Abuelyaman v. Illinois State Univ., 667 F.3d 800, 807 (7th Cir. 2011) (explaining the excusable neglect standard). The current cost of filing an appeal with the Seventh Circuit is \$505.00. The filing fee is due at the time the notice of appeal is filed. FED. R. APP. P. 3(e). If Plaintiff cannot afford to pay the entire filing fee up front, he must file a motion for leave to appeal *in forma pauperis* (“IFP motion”) along with a recent statement for his prison trust fund account. *See* FED. R. APP. P. 24(a)(1)(C). The IFP motion must set forth the issues Plaintiff plans to present on appeal. *See* FED. R. APP. P. 24(a)(1)(C).

On the other hand, if Plaintiff wants to start with the undersigned, he can file a motion to alter or amend the judgment under Federal Rule of Civil Procedure 59(e), but such a motion is not required to preserve his appellate rights. Any Rule 59(e) motion *must* be filed within twenty-eight (28) days of the entry of judgment. FED. R. CIV. P. 59(e), and the deadline *cannot* be extended. *See* FED. R. CIV. P. 6(b)(2). Any motion must also comply with Rule 7(b)(1) and state with sufficient particularity the reason(s) that the Court should reconsider the judgment. *Talano v. Nw. Med. Faculty Found., Inc.*, 273 F.3d 757, 760 (7th Cir. 2001). *See also Elustra v. Mineo*, 595 F.3d 699, 707 (7th Cir. 2010) (“This court has held that otherwise timely skeletal motions that fail to satisfy the requirements of FED. R. CIV. P. 7(b)(1) do not postpone the 30-day period for filing a notice of appeal . . .”).

So long as the Rule 59(e) motion is in proper form and filed no later than 28 days after the judgment is entered, the 30-day clock for filing a notice of appeal will be stopped. FED. R. APP. P. 4(a)(4). The clock will start anew once the motion is ruled on. FED. R. APP. P. 4(a)(1)(A), (a)(4), (a)(4)(B)(ii). To be clear, if the Rule 59(e) motion is filed outside the 28-day deadline or “completely devoid of substance,” the motion will not stop the clock for filing a notice of appeal, and the clock will expire 30 days from the entry of judgment.

Carlson v. CSX Transp., Inc., 758 F.3d 819, 826 (7th Cir. 2014); *Talano v. Northwestern Medical Faculty Foundation, Inc.*, 273 F.3d 757, 760–61 (7th Cir. 2001); *Martinez v. Trainor*, 556 F.2d 818, 819–20 (7th Cir. 1977). Again, the deadline for filing a notice of appeal can be extended only on a written motion by Plaintiff showing excusable neglect or good cause.